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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,104	05/10/2001	James R. Richard	01478-P0006B	5802

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EXAMINER

HOEY, ALISSA L

ART UNIT PAPER NUMBER

3765

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,104

Applicant(s)

RICHARD, JAMES R.

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacDonald (US 3,070,102).

MacDonald provides an elongated member integrally formed of a thin flexible plastic material (figure 6). The elongated member defining a handle portion (10) and a head portion (6). A cleaning portion attached to the head portion of the elongated member (12 and 14). The cleaning portion comprising a plurality of cleaning projections protruding outwardly from the head portion of the elongated member (figures 5 and 6). Further, MacDonald provides a backing material having an adhesive on a first surface adhered to the head portion of the elongated member and having a plurality of projections protruding from a second surface thereof (figures 5 and 6). The head portion of the elongated member is wider than the handle portion of the elongated member (figure 1, identifiers 6 and 10). MacDonald fails to teach the head portion conforming to the tongue and roof of the mouth and the device being a tongue cleaning device.

It would have been obvious for the head portion to be pressed with the tongue against the roof of the mouth conform the head portion to the shape, since the head member and handle member are comprised of a flexible material and nothing prevents

it from conforming to any shape it is put in. It would have been obvious for the rubber handle portion to be deformable around a user's teeth and the device pressed against the users mouth by a tongue. It would have been further obvious to have used the toothbrush to clean the tongue, since toothbrushes are well known in the art to be used as tongue cleaning devices along with the teeth of a user.

3. Claims 4-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacDonald in view of Porcelli (US 5,678,273).

MacDonald provides a hygiene device as described above. However, MacDonald fails to teach the plurality of projections comprised of fiber loops or loop portions of a hook and loop fastening system. Further, MacDonald fails to teach an antiseptic or antimicrobial compound carried on the cleaning portion. Porcelli provides a plurality of projections comprised of fiber loops that can be loop portions of a hook and loop fastening system (column 2, lines 28-41). Porcelli also provides an antimicrobial compound carried on the cleaning portion (column 2, lines 56-67).

It would have been obvious to have provided the hygiene device of MacDonald with the loop projections and the antimicrobial compound of Porcelli, since the loop projections provide a swooping function that acts to capture food particles and other debris whereas cut bristles do not.

Response to Arguments

Applicant's arguments filed 08/14/02 have been fully considered but they are not persuasive. Applicant argues that MacDonald does not have an elongated handle portion being of deformable material. MacDonald provides a hygiene device with an

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elongated handle portion (see figure 1, identifier 10). The handle portion of MacDonald is made from a deformable material (column 2, lines 3-8). The handle portion of MacDonald being made out of rubber is capable of being deformed around a user's teeth. The device of MacDonald has the capabilities to deform around a user's teeth and to be pressed against a user's mouth by a tongue. The definition of a handle in Merriam Webster's Collegiate Dictionary 10 edition, states that a handle is a part that is designed to be grasped by the hand: something that resembles a handle. Reference number 10 of MacDonald is grasped by fingers of the user (column 2, lines 47-53) and is therefore considered a handle.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0758 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

alh
September 19, 2002


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700